2967

SUPREME COURT OF THE UNITED STATES.

No. 285.

JOHN T. MASON, PLAINTIFF IN ERROR,

vs.

JOSEPH C. GAMBLE AND DAVID GAMBLE.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MARYLAND.

INDEX.

	Original.	Print.
Summons	1	1
Nar	2	2
Marshal's return	4	2
Plea and issue	4	3
Jury	5	3
Verdict and judgment	5	3
Defendant's 1st exception	6	4
Defendant's 2d exception	7	4
Import entry	8	5
Defendant's prayers	19	12
Court's instructions	21	13
Writ of error	23	14
Citation	24	14
Writ of error bond	25	15
Clerk's certificate	26	16

GIDEON, Print.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-eight—present the Honorable R. B. Taney, Chief Justice of the Supreme Court of the United States, William F. Giles, judge of Maryland district, Wm. Meade Addison, esquire, attorney, John W. Watkins, esq., marshal, Thomas Spicer, clerk—among other were the following proceedings, to wit:

JOSEPH C. GAMBLE, DAVID GAMBLE
vs.
JOHN THOMPSON MASON.

Be it remembered that heretofore, to wit, on the sixteenth day of June, in the year of our Lord one thousand eight hundred and fifty-eight, the said Joseph C. Gamble and David Gamble, by James M. Campbell, their attorney, prosecuted and sued forth out of the circuit court here the writ of the United States of America of summons directed to the marshal of the Maryland district, in words and of the tenor following, to wit:

Summons.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the Marshal for the Maryland district, greeting:

[SEAL.] We command you that you summon John Thompson Mason, a citizen of the State of Maryland, if he shall be found in your district, that, all excuses and delays set aside, he be and appear before the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore on the first Monday in November next, to answer unto Joseph C. Gamble and David Gamble, aliens and subjects of the queen of the united kingdom of Great Britain and Ireland, in a plea of trespass on the case, &c. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the Honorable R. B. Taney, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-seven.

J. M. C. Issued 16 June, 1858.

THO. SPICER,
Cl'k Cir. Ct.

And the aforesaid Joseph C. Gamble and David Gamble, by their attorney aforesaid, on the day of prosecuting and suing forth of the aforesaid, declared against the said John Thompson Mason, in the plea aforesaid, in form following, to wit:

Nar.

Circuit Court of the United States for the fourth circuit, in and for the district of Maryland.

MARYLAND DISTRICT, *to wit:*

John Thompson Mason, a citizen of the State of Maryland, was summoned to answer unto Joseph C. Gamble and David Gamble, aliens and subjects of the queen of the united kingdom of Great Britain and Ireland, and partners in business under the style of Joseph C. Gamble & Son, in a plea of trespass on the case, and so forth. And thereupon the said plaintiffs, by James Mason Campbell, their attorney, complain:

For that whereas the defendant heretofore, to wit, on the twenty-second day of May, in the year eighteen hundred and fifty-eight, was indebted to the plaintiffs in the sum of one hundred and ninety-two dollars and sixty-eight cents, for money by the defendant before that time had and received to and for the use of the plaintiffs; and being so indebted, the defendant, in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the plaintiffs to pay them the said sum of one hundred and ninety-two dollars and sixty-eight cents on request.

Nevertheless, the defendant, not regarding his promise and undertaking, hath not yet paid the said sum of money, or any part thereof, to the plaintiffs, although often requested so to do; but to pay the same, or any part thereof, he hath hitherto wholly refused and still doth refuse, to the damage of the plaintiffs three hundred and fifty dollars, and thereupon they bring suit, &c.

J. MASON CAMPBELL,
Plaintiffs' Att'y.

A copy of which said declaration was made and sent with the said writ to the marshal of the Maryland district aforesaid, thereon endorsed, "Case; copy nar to be left with the defendant."

At which mentioned first Monday in November, in year of our Lord one thousand eight hundred and fifty-eight, being the day of the return of the aforegoing writ, comes into the circuit court here the said Joseph C. Gamble and David Gamble, by their attorney aforesaid, and the marshal of the Maryland district aforesaid, to wit, John W. Watkins, gentleman, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here thus endorsed, to wit:

"Summoned. Jno. W. Watkins, U. S. Marshal."

And the said John Thompson Mason being called, appears in court here by Wm. Meade Addison, his attorney.

And thereupon, on motion of Joseph C. Gamble and David Gamble, by their attorney aforesaid, it is ruled by the court here that the said John Thompson Mason answer to the declaration aforesaid of the said Joseph C. Gamble and David Gamble in the plea aforesaid, or judgment by the court here will be entered against him in default thereof.

And the said John Thompson Mason, by his attorney aforesaid, defends the force and injury, when, and so forth, and saith that he did not assume upon himself in manner and form as the aforesaid Joseph C. Gamble and David Gamble above against him have complained, and of this he puts himself upon the country; and the said Joseph C. Gamble and David Gamble, by their attorney, in like manner, &c. Therefore let a jury thereon appear before the court here immediately, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c.; whereupon for trying the issue aforesaid, it is ordered by the court here that twenty persons from the panel of petit jurors returned to the court here by the marshal of the Maryland district be drawn by ballot. And thereupon the twenty persons being so drawn by ballot and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, thereupon the remaining twelve persons being called, come, to wit:

Jury.

Wm. A. Hack, Joshua Jones, Thomas C. Watkins, Thomas Bowers, Jno. B. Seidenstricker, George Coulton, Joseph Heigh, Gilmor Meredith, Samuel Brady, S. C. Leakin, L. G. Quinlin, Caleb Hershall, who, being empanelled and sworn to say the truth in the premises, upon their oath do say, that the said John Thompson Mason did assume upon himself, in manner and form as the aforesaid Joseph C. Gamble and David Gamble within against him have complained; and they assess the damages of the aforesaid Joseph C. Gamble and David Gamble, sustained by occasion of the non-performance of the promises and assumptions aforesaid, to the sum of one hundred and ninety-three dollars and eighty-eight cents, current money.

Therefore it is considered by the court here, that the aforesaid Joseph C. Gamble and David Gamble recover against the said John Thompson Mason the sum of one hundred and ninety-three dollars and eighty-eight cents, current money, their damages aforesaid, by the jurors aforesaid, in form aforesaid sustained, by occasion of the non-performance of the promises and assumptions aforesaid; as the sum thirty-seven dollars and thirty cents by the court here unto them, the said Joseph C. Gamble and David Gamble, on

their assent adjudged, for their costs and charges by them above their suit in this behalf laid out and expended; and the said John Thompson Mason, in mercy, &c.

Memorandum.

Before the jurors aforesaid withdrew from the bar of the court here, the defendant, by his attorney aforesaid, tendered to the court here the following bills of exception; which were by the court here signed and sealed, and which are in words and figures following, to wit:

Defendant's Exception No. 1.

GAMBLE et al.
vs.
MASON.

The plaintiffs in this cause, by their attorney, put the following question to J. N. Watkins, a witness produced on their behalf, and sworn in chief:

You have stated that caustic soda was first imported in this port in 1853. What has been the practice of the custom-house here in regard to the classification of that article, and in such classification what enumerated article, if any, was it, by such practice, held most to resemble?

To the asking which question the defendant objected; but the court overruled the objection, and allowed said question to be put: to which allowance the defendant excepted, and prayed the court to sign and seal the bill of exceptions, which is done at bar, this 26th November, 1858.

WILLIAM F. GILES. [SEAL.]

Defendant's Second Bill of Exceptions.

In the Circuit Court of the United States for the Maryland district.

JOSEPH C. GAMBLE and
DAVID GAMBLE
vs.
JOHN THOMPSON MASON.

At the trial of this cause the plaintiffs, to support the issue on their part, offered in evidence to the jury, by John N. Watkins, a competent witness produced on their behalf and sworn, that he, witness, has been an officer in the custom-house, in Baltimore city and State of Maryland, since May, 1853; that his position in said custom-house, from May, 1853, to January 1st, 1858, was that of entry clerk and liquidating clerk, and that from January, 1858, up to the present time, his position is that of entry clerk alone; that as such entry clerk he passed the entry of caustic soda, imported by the Ann E. Hooper, the duty upon which is the subject of this controversy. This entry was made on the 16th of April, 1858. The

valuation placed on said caustic soda by the custom-house was $1,700. On this there was levied and assessed by the collector of the port of Baltimore a duty of 15 per cent., amounting to $225. This was paid by Mr. Donald McIlvain, the agent and consignee of the plaintiffs, under protest in writing; which entries and protest are in form following, to wit:

On the sixteenth day of April, in the year eighteen hundred and fifty-eight, came Donald McIlvain, agent of Joseph C. Gamble and David Gamble, and presented the following entry of merchandise, which were imported in the ship Ann E. Hooper, from Liverpool.

Import Entry.

Entry of Merchandise imported by D. McIlvain, in the ship "Ann E. Hooper," from Liverpool, Ap'l, 1858.

Marks.	Nos.	Packages and contents.	Quantity.	Per ct.	Per ct.
DM.	$\frac{1}{100}$	One hundred barrels caustic soda ash	*Cwt.* 378 0 23	*a* 16*s.* 6*d.*	£312 0 5
		Additional		1*s.* 6*d.*	28 7 4
					£340 7 9
		Commission 2½ p. c.			8 10 3
					£348 18 0

£348 18 0, at 4 $\frac{84}{100}$=$1,689, *a* 4 p. c., $67 56.

That at the same time, Mr. McIlvain produced the following invoice, of which the aforegoing entry purports to be a copy:

Invoice of 100 barrels caustic soda ash, shipped per Ann E. Hooper for Baltimore, consigned to Mr. McIlvain, there for sale, on ac't of Jo. C. Gamble, of St. Helen's.

100 barrels caustic soda ash:

	Cwt.	
DM. $\frac{1}{100}$	420 3 19	gross.
	42 2 24	tare.
	378 0 23	pr. h., at 16*s.* 6*d.* pr. cwt. full on board, £312 0 5.

To this invoice were annexed the following papers, to wit:

Liverpool, to wit: I, David Gamble, of St. Helen's, solemnly, sincerely, and truly swear, that I and my partners, doing business at Saint Helen's, under the firm of Joseph C. Gamble & Son, are the true and lawful owners of certain wares or merchandise, as

specified in the invoice subscribed by the proper signature of my firm, amounting to three hundred and twelve pounds and five pence, £312 0 5, and here produced to the undersigned, and shipped at Liverpool in one vessel, by the Ann E. Hooper, for Baltimore, in the United States of America; and the said invoice hereunto annexed contains a true and faithful account of the said goods, wares, or merchandise; that the price stated in said invoice was the actual market value or wholesale price of said goods, wares, or merchandise, in the principal markets of this country, at the time of shipment, and that all the charges, except freight and insurance, are truly stated in said invoice; and the said invoice contains no discounts, bounties, or drawbacks, but such as have been actually allowed.

DAVID GAMBLE.

Sworn at Liverpool, the 10th day of March, 1858, before me.

HY. WILDING,
Vice Consul.

In the presence of JOHN SHAW.

I, the undersigned, consul of the United States of America in the port of Liverpool and its dependencies, do certify and make known to whom these presents shall come, that Henry Wilding, before whom the annexed affidavit of David Gamble hath been made, is vice-consul, duly authorized to administer oaths and affirmations; that the deponent is in my opinion worthy of credit and qualified to verify the annexed invoice, and that the said affidavit was administered in the presence of John Shaw.

Given from under my hand and seal of office at Liverpool the [SEAL.] 10th day of March, and year one thousand eight hundred and fifty-eight.

BEVERLY TUCKER.

On comparing and examining the said entry and invoice at the custom-house, Baltimore, the following additions were there made by the officers of the customs endorsed on the said invoice as having been made on the entry:

"Added by the importer 1*s.* 6*d.* on cwt." "Com's added." "Rate of duty fifteen per cent."

The rate of duty at four per cent. on $1,689, amounting to $67 $\frac{56}{100}$, made on the entry by importer, was there changed thus: duty on $1,689 *a* 15 per cent. = $253 $\frac{35}{100}$, and this latter sum paid by the importer under a protest, which is in the words following, to wit:

BALTIMORE, 16*th April*, 1858.

Hon. JOHN THOMPSON MASON,
Collector of the Port of Baltimore.

I protest against the payment of duties on 100 bbls. caustic soda ash, imported by the ship "Ann E. Hooper," from Liverpool,

entered this day, on any greater value than 16 ⅙ p. cent., with the commission on same; also on the rate of duty of 15 p. cent., the same not being subject to a higher rate of duty than 4 p. cent.

I pay the duties, however, on the increased or additional value of 1 ⅙ p. cent. and the increased duty of 11 p. cent., in order to get possession of the said merchandise, reserving to myself all my rights to recover the overplus by law.

D. McILVAINE.

That on final liquidation of the said entry, the true value of the caustic soda ash was ascertained to be $1,700; and that in estimating the duties on that sum at fifteen per centum, the difference between the duty on that sum and the duty on $1,689, the value stated on the entry, was $1 $\frac{65}{100}$, which Mr. Donald McIlvaine paid.

And that afterwards, to wit, on the 24th day of April, 1858, Donald McIlvaine delivered to the collector of the port of Baltimore the following letter, to wit:

BALTIMORE, 24*th April*, 1858.

SIR: On the 16th April, 1858, I made an entry of caustic soda imported into the port of Baltimore from Liverpool p. ship "Ann E. Hooper." Upon that importation you demanded a duty of 15 per cent., and an addition to the invoice cost of one shilling and sixpence p. cwt. I paid the duty as so demanded and decided by you, under protest; and I now, in pursuance of the act of Congress in such case made and provided, give you notice within 10 days that I am dissatisfied with such your demand and decision, and that my several grounds of objection thereto are as follows:

1st. That being a non-enumerated article, and applied to the same uses with soda ash and bleaching powders, it ought only to pay 4 per cent., being the duty chargeable by the tariff act of 1857.

2d. That it bears a similitude in material to soda ash, and for that reason ought to be charged with the same duty as soda ash.

3d. That the invoice cost was the true value, and ought not to have been augmented.

I am, very respect'y,
D. McILVAINE.

Hon. JOHN THOMPSON MASON,
Collector of Customs for Port of Baltimore.

The collector still insisting that said caustic soda was liable and bound to pay 15 per cent., as had been assessed on it, the said McIlvaine thereupon appealed from the decision of said collector in the premises to the Secretary of the Treasury of the United States at Washington, who thereupon addressed the following letter to said McIlvain, (and sent it to the custom-house in Baltimore, by whom it was given to Mr. McIlvain,) notifying him that the decision of the collector aforesaid was affirmed.

TREASURY DEPARTMENT, *May 18th*, 1858.

Your appeal under date of the 13th inst., taken from the decision of the collector of customs at Baltimore, subjecting to duty at the rate of 15 per cent., under Schedule E of the tariff act of March 3, 1857, caustic soda, imported and described as follows, viz: 1858, April 16th—Ship Ann E. Hooper, Liverpool, is received, and you are hereby informed that the decision of the collector is affirmed.

I am, very respectfully,

HOWELL COBB,
Secretary of the Treasury.

D. MCILVAIN, Esq.,
Baltimore, Md.

The said witness, Watkins, further proved, that the aforesaid importation of caustic soda by the Ann E. Hooper was not the first importation of said article into the United States, or into this port. The said article was first imported at this port in 1853, and is uniformly called in the invoices caustic soda ash. Soda ash had been imported before this time. When caustic soda was first imported, the duty upon it was assessed under the act of 1846. The said witness further said, that when said article, caustic soda, was first imported—that is, in 1853—it was by witness, as entry clerk, considered to bear a similitude to and resemble soda ash, which, under the act of Congress of 1846, is assessed as liable to a duty of 10 per cent.; that, accordingly, under the 20th section of the tariff act of 1842, he classified said caustic soda as liable to the duty of 10 per cent., and levied the same upon it. It was his duty to fix the rate of duty. to which said article was liable under the act of Congress of 1846, which was then the tariff act in operation, and, as was his duty, he endorsed the invoice 10 per cent. as the rate of duty to which said article was liable. A sample was then directed to be sent to the appraisers of the custom-house for them to examine it; they returned the invoice, and passed it as I had fixed it; it was the duty of the appraisers to examine the article. A good many importations were made of this article by Mr. McIlvain from 1853 to July, 1857, on which day the act of 1857 went into operation. In all of these importations, the same classification and levy was made as above stated; and in the case of the Ann E. Hooper, and of all the other importations of said article, a report of said classification, levy, &c., was embraced in the report made to the Treasury Department at Washington. From July, 1857, up to 2d March, 1858, there were some eight importations of this article, caustic soda, and under said act, soda ash being liable to a duty of 4 per cent., the said importations of caustic soda were assessed as liable, on same principle as above stated, to 4 per cent. ad valorem. A report in the mode above stated as to said assessment continued to be made in each case to the Treasury Department. On the 2d of

March, 1858, the Secretary of the Treasury decided that caustic soda was liable to a duty of 15 per cent. ad valorem.

When caustic soda was first imported, the appraisers were, Philip Poultney, an iron merchant; and Gosnell, a dry goods merchant; the appraisers at the present time are Richardson and Sprauge, the former a printer; Mr. Baughman is general appraiser.

And the said John N. Watkins, on his cross-examination, deposed and said: The first importation of caustic soda into the port of Baltimore after the decision of the Secretary of the 2d of March, 1858, was that by the Ann E. Hooper, which is, that the duty on which is the subject of this controversy. Witness is not a chemist, nor has he any knowledge of the qualities of soda ash or caustic soda. The name alone of caustic soda ash made me assimilate it to soda ash under the 20th sec. of act of 1842, and I think I also asked Mr. McIlvain what was the character of caustic soda. No one else besides Mr. McIlvain imports soda ash or caustic soda into this port. When I fixed the rate of duty to which said article, caustic soda, was liable, a sample of it was directed to be sent to the appraisers to examine. It is his custom to inquire of the importer as to the character of the articles, when not acquainted with them himself; and he thinks it more than probable, as such is custom, that on the presentation of the invoices by Mr. McIlvain, the agent of the plaintiffs, and importer, he inquired of him as to the nature of the article; but of this he is not sure.

Caustic soda has never been imported into this port, except when consigned to Mr. McIlvain, the agent of the plaintiffs. All his information as to the character and qualities of caustic soda must have been obtained from Mr. McIlvain.

The appraisers from the year 1853 down to this time were not, nor were either of them, chemists.

And the plaintiffs further offered in evidence by Mr. George W. Andrews, a witness produced on their behalf and duly sworn, that witness is a chemist, and has tested caustic soda, the article now spoken of, and about which this controversy exists, to determine what amount of pure soda it contains; its value depends upon the amount of pure soda in it. There is in soda ash from 48 to 52 per cent. of pure soda; some containing 48 per cent., and so ranging up to 52 per cent. Caustic soda averages an analysis of about 58 per cent.; the predominant element in each is soda.

I am somewhat acquainted with the manufacture of soap, and the object in using soda ash or caustic soda is one and the same, that is to get the alkali from them, or in other words to get the soda from them. I know of nothing which is imported that is more like caustic soda than soda ash; both are used in the manufacture of soap and glass.

And the said witness, on his cross-examination, further deposed and said: The element in soda ash, other than soda, may be con-

sidered foreign elements; there are no uses to which soda ash is put that caustic soda may not be put. I first tested caustic soda in 1853, when, as far as I know, it was first imported. I had never before seen or heard of it as an article of commerce; had known caustic soda before this, which I and others had made; this was same article as that imported. The caustic soda which I say I knew of prior to 1853 is made of soda ash and lime; the lime is used to take away the carbonic acid from the soda ash. The soda ash is an impure carbonate; the caustic soda has little or no carbonic acid in it. I do not know how the imported article is made. Soda ash cannot be used in the manufacture of soap till it is changed into caustic soda; caustic soda and soda ash are essentially and chemically different from each other. I never heard caustic soda called caustic soda ash.

And said witness being re-examined in chief, deposed and said, the object in using soda ash, or caustic soda, in the manufacture of soap, is to get the soda which they contain; to the same extent that soda ash and caustic soda contain soda, they are alike.

The plaintiffs further offered in evidence by Mr. Curlett, a witness produced on his behalf, and sworn, that witness is engaged in the manufacture of soap in Baltimore city, and in such manufacture I use caustic soda, having first used it in 1853, and having previous to that time used soda ash for same purpose for which I now use caustic soda. It is used for making hard soap; caustic soda has more soda in it than soda ash has in it. There is more strength in the soap made by using caustic soda than in that made with soda ash. Soap can be made with soda ash. Whether we use the one or the other is determined by the price of the two; whichever is cheapest, and most to our interest, this we use. I know nothing imported which more resembles caustic soda than does soda ash; caustic soda and soda ash are essentially the same.

And the same witness on his cross-examination deposed and said: Caustic soda has not superseded soda ash in the manufacture of soap. It is altogether a question of cost which we use. Caustic soda ranges in price from 5 and $\frac{3}{4}$ to 6$\frac{1}{4}$, and soda ash from 2$\frac{3}{4}$ to 3$\frac{7}{8}$. Soda ash fluctuates more than caustic soda. I should use soda ash if caustic soda became too high to make it profitable; caustic soda is the more convenient of the two.

The plaintiffs further offered in evidence by Mr. Webb, a witness produced on their behalf and sworn, that witness is a member of the firm of James Armstrong & Co., large soap manufacturers in Baltimore city. We use caustic soda in the making of hard soap, and have used it in making soft soap. We used it for the first time some 5 or 6 years ago; before that time we used soda ash for the same purpose that we now use caustic soda; the latter has more soda in it. It depends on the price, which we use; if caustic soda was too high we would use soda ash.

And the same witness, on his cross-examination, said: When we consider soda ash cheaper than caustic soda we use soda ash. We consider soda ash at 2 and $\frac{7}{8}$ equal to caustic soda at 5 and $\frac{3}{4}$.

Mr. Farminger, a witness produced on behalf of the plaintiffs and sworn, deposed and said: I am a soap manufacturer in Baltimore city, and am acquainted with caustic soda, having used it in the manufacture of soap for 6 or 7 years—that is, since it was first introduced; before this we used soda ash instead. Whether we use the one or the other is regulated by the price.

And the plaintiffs here rested.

And thereupon the defendant, to support the issue on his side joined, offered in evidence to the jury by Doctor William E. A. Aiken, a competent witness duly sworn, that he is professor of chemistry in the University of Maryland, and holds an appointment under the United States as inspector of drugs and medicines for this port; that soda ash is a compound of soda combined with carbonic acid, and caustic soda is pure soda; that caustic soda may be described as the completion of the process that has been begun in soda ash; that they are chemically distinct; that as long as soda ash retains its identity it is inapplicable to the uses to which caustic soda is applied; that in the manufacture of soap and glass nothing but caustic soda will answer. Soda ash may be used in the manufacture these articles, but it must first be converted into caustic soda. In the process of making caustic soda from salt there is one stage of the process in which the product must exist in the chemical condition of soda ash; that caustic soda is made by soda ash and the addition of quick-lime; and when soda ash is used in the manufacture of glass or soap it must be made caustic soda by the addition of quick-lime.

That there is no similarity, either in material, quality, texture, or the uses to which it is applied, between caustic soda and soda ash.

That there is no propriety in calling caustic soda caustic soda ash. It is only since 1856 that it has been so called.

And the said witness, on his cross-examination, further deposed and said: Caustic soda more nearly resembles carbonate of soda than it does soda ash, only for this reason, that in equal weights carbonate of soda has more soda in it than soda ash has; soda ash and carbonate of soda each contain caustic or pure soda and carbonic acid. In the one case we have pure carbonate of soda, and in soda ash we have carbonate of soda and fifty, and sometimes more than fifty, per cent. earthy impurities, or foreign matter.

When soda ash is used in the manufacture of soap instead of caustic soda, it is not changed into caustic soda by a separate or distinct process, but by the extemporaneous action of quick-lime it is so changed in the course of the process of manufacturing the soap as before stated.

There is no resemblance between carbonate of soda and caustic soda, or between soda ash and caustic soda, but there is a point of agreement between caustic soda and both of them; the only point of agreement between them is, that caustic soda and soda ash, and carbonate of soda, all contain soda.

The object of putting quick-lime with soda ash in the manufacture of soap is to take away the carbonic acid, and thereby produce caustic soda.

Carbonate of soda is never used in the manufacture of soap. It might be used to furnish caustic soda by chemical change; but until so changed, it is physically impossible to use it in the manufacture of soap or glass.

And thereupon the defendant prayed the court to instruct the jury as follows:

Defendant's Prayers.

1st. If the jury find from the evidence that soda ash and caustic soda are chiefly used in the manufacture of soap and glass, but that soda ash is not applicable to those purposes until it has been converted into "caustic soda," and shall further find that the defendant did not exact from the plaintiffs on the importation of caustic soda given in evidence in this cause, duties at a greater rate than fifteen per cent. ad valorem, then the plaintiffs are not entitled to recover.

2d. If the jury find from the evidence that "caustic soda" and soda ash are indifferently used in the manufacture of soap and glass, but that the use to which soda ash is applied when it is used in the manufacture of those articles is to produce caustic soda, and shall further find that the defendant did not exact a higher rate of duty than fifteen per centum ad valorem on the importation of caustic soda, given in evidence in this cause, then the plaintiffs are not entitled recover.

2d. If the jury find from the evidence that caustic soda was first imported as an article of commerce in the year 1853, and that it and soda ash are "essentially and chemically different;" that soda ash is a compound of soda combined with carbonic acid; and that caustic soda is pure soda; and that caustic soda is made of soda ash, and an addition of quick *of quick* lime; and if the jury further find that caustic soda and soda ash are principally used in the manufacture of soap and glass, but that soda ash is never applicable to such uses until it is converted by the addition of quick-lime into caustic soda; and shall further find that the duties exacted on the importation of caustic soda given in evidence did not exceed the rate of fifteen per cent. ad valorem, then the plaintiffs are not entitled to recover.

4th. That unless the jury find that there is a similitude, either in material, quality, texture, or the uses to which they are applied,

between caustic soda and soda ash, the plaintiffs are not entitled to recover.

5th. That the duties properly chargeable on "caustic soda" imported from a foreign country are fifteen per centum ad valorem, and unless the jury shall find that the defendant exacted duties at a greater rate than fifteen per centum on caustic soda imported by the plaintiffs, they are not entitled to recover.

But the court refused to grant the instructions prayed for by the defendant, but instructed the jury as follows:

Court's Instructions.

1st. If the jury shall find from the evidence in this case that the caustic soda upon which the duties were paid bears a similitude, either in material, quality, texture, or the use to which it may be applied, to soda ash, and that it most resembles soda ash of any of the enumerated articles, then it was only liable to a duty of four per centum ad valorem, and the plaintiffs are entitled to recover in this case for the excess of duty paid by them: Provided the jury shall further find that the plaintiffs, within ten days after the decision of the collector in this matter, gave notice to him of their dissatisfaction with his decision, and set forth distinctly and specifically the grounds of objection thereto, and did, within thirty days after the date of such decision, appeal therefrom to the Secretary of the Treasury, and did, within thirty days of the date of the decision of the Secretary of the Treasury in this matter, institute this suit.

2d. But if the jury shall find all the other facts stated in the first instruction, except that caustic soda more resembles carbonate of soda than it does soda-ash, then caustic soda would be liable to a duty of eight per centum ad valorem; and the plaintiffs would be entitled to recover any excess of duties they may have paid over that amount.

To which refusal to instruct the jury as prayed, and to the instructions granted by the court, the defendant excepted, and prayed the court to sign and seal this bill of exceptions, which is accordingly done this twenty-sixth day of November, 1858.

WILLIAM F. GILES. [SEAL.]

And now here at this day, to wit, the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and fifty-eight, the said John Thompson Mason produced to the said circuit court here the writ of the said United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States to be held at the city of Washington on the first Monday in December next, which said writ of error is in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Judges of the Circuit Court of the United States for the fourth circuit, in and for the Maryland district, greeting:

[L. S.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, *you*, or some of you, between Joseph C. Gamble and David Gamble, plaintiffs, and John Thompson Mason, defendant, a manifest error hath happened, to the great damage of the said John Thompson Mason, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the first Monday in December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done. Witness the Honorable R. B. Taney, Chief Justice of our Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-seven.

Issued 26th November, 1858.

THO. SPICER,
Cl'k Circ't Co.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To Joseph C. Gamble and David Gamble, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United , to be held at the city of Washington on the first Monday in December, A. D. 1855, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fourth circuit, in and for the Maryland district, wherein John Thompson Mason is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said John Thompson Mason should not be corrected, and why speedy justice should not be done to the parties in this behalf. Witness my hand and seal this third day

January, in the year of our Lord one thousand eight hundred and fifty-nine.

WILLIAM F. GILES. [SEAL.]

Notice of the above citation acknowledged.

J. MASON CAMPBELL.

Writ of Error Bond.

Know all men by these presents, John Thompson Mason, James S. Owens, and John Nick Watkins are held and firmly bound unto Joseph C. Gamble and David Gamble in the just and full sum of four hundred dollars, lawful money of the United States, to be paid to the said Joseph C. Gamble and David Gamble, their heirs, executors, administrators, or assigns, to which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors and administrators, jointly and severally, firmly, by these presents. Sealed with our seals, and dated this third day of January, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas at a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-eight, the said Joseph C. Gamble and David Gamble, by the judgment of the same court, recovered against the said John Thompson Mason, as well the sum of one hundred and ninety-three dollars and eighty-eight cents, their damages, as also their costs and charges by them laid out in the premises; and whereas the said John Thompson Mason hath sued out the writ of the United States of America for the correcting of errors, and a citation directed to the said Joseph C. Gamble and David Gamble, citing and admonishing them to be and appear at a Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, to show cause, if any there be, why the judgment so as aforesaid rendered, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties aforesaid in that behalf:

Now, the condition of the above obligation is such, that if the said John Thompson Mason shall well and truly prosecute with effect his said writ of error, and pay unto the said Joseph C. Gamble and David Gamble, their heirs, executors, administrators, or assigns, the amount of the said judgment, costs and charges adjudged unto them in the said circuit court, and all such damages, costs, and charges as shall be awarded unto them by the said Supreme Court, in case the said John Thompson Mason shall fail to make good his said plea, then the above obligation to be void, and of none effect; otherwise to be and remain in full force and virtue in law.

JNO. THOMSON MASON, [SEAL.]
J. S. OWENS, [SEAL.]
JNO. NICK WATKINS. [SEAL.]

Signed, sealed, and delivered in presence of—
JNO. W. DAVIS.

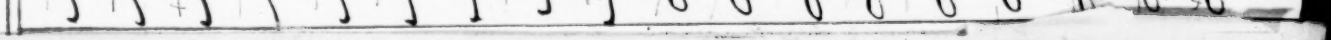
Bond approved 3 Jan'y, 1859.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name, and affix the seal of the said circuit court, this fourth day of January, in the year of our Lord one thousand eight hundred and fifty-nine.

[SEAL.]

THO. SPICER,
Cl'k Circ't C't.

Filed 6 Jan'y, 1859.



Index.

Alabama &c	Georgia	1.
Addison	Crawford	36.
American &c	Cook &c	1346.
Appointment	Board of Com^rs	1713.
Arkansas State	Lytle & Corse &c	1716.
Alvis	U. States	2848.
Armijo	" "	3530.
Adams	Norris	3687.
Arrows	Fletcher &c	5016.
Bowdies &c	Sherwood &c	369.
Boston Beltings	Chaffee	409.
Brewster	Makefield	526.
Butler &c &c	Gaines &c	746.
Barque Langin	Goddard	1260.
Berthold &c	McDonald	1454.
Board of Com^rs	Appointment	1713.
Bullard	Castle &c	2268.
Brewer	Moore	2573

Bennett	U. States	2687.
Bullitt et al	Kimbro	2752.
Bancroft & Co.	Sutton & Co.	2857.
Bowen et al	Clark et al	2952.
Bolton	U. States	3007.
Beaubien et	Beaubien et	3222.
Bermeyesaisin	U. States	4157.
Bank of Pittsburg	Veal et al	4501.
Bliven et al	New England M. Co.	4727 4748.
Barque Griffin	Greenway et al	4777.
Benjamin	Hilliard et al	4808.
Bell	Mayor of Vicksburg	5232.
Balt. & Packet Co.	Kenny et al	5268.
Banning	Jenkins et al	5324.
Babcock	Ward	5349.
Bidwell	U. States	5383.
Baker et al	Windsor et al	5408.
Byles et	McMillan et al	5484.
Crawford	Addison	36.
Caley	Erie & N.E. R.R. Co.	52.

Chaffee	Boston Belting Co.	409.
Cone et al	Morrill	414.
Claflin et al	Lawler	446.
Collins	Thompson et al	957.
City of N. Orleans	Gaines	1647.
Creighton et al	Green's adm'x.	1681.
Chapman et al	Roach & Long	2209.
Castle et al	Bullard	2268.
Cage's Exor	Calliday et al	2308
Calliday et al	Cage's Exor	2308.
Cucullu	Emmerling	2404.
Check et al	Overton et al	2409.
Coe, Trustee	Pennock et al	2453.
Conway	Cooper et al	2557.
Clark et al	Bowen et al	2952.
Castillero	U. States	3341.
Chiappella	Freeman	3699.
Coleman	Verden	3944.
Cleveland, C. & Columbus & P. R. R. Co.	Gabriskie	3963.

Custard	Green	4824.
Curtis	Hendricks	4357.
Caldwell	Foster	4376.
Cartner et al	Symonds	4879.
Callan et al	Statham et al	3744.
Carroll et al	Thompson et al	5202.
Dalton	U. States	328.
Davenport et al	Sinnott et al	428.
Davenport et al	Foster et al	2874.
Dermott	Jones	2572.
De Haas Heirs	U States. 3674	3799.
De Galdo	U. States	3791.
Dill et al	Whitbridge	5303.
Dubuque & P.R.R. Co	Litchfield	5504.
Erie & K.E.R.R. Co	Cakes	52.
Emmerling	Kuck	1042.
Emmerling	Cuculler	2404.
Emerson	Slater	3357.
Enequist et al	Norwood et al	4252.
Flowers et	Foreman et	540.

Foreman et al	Florence et	340.
Fuentes	U. States	822.
Ford	Oelrichs et al	1627.
Foster et al	Davenport et al	2504.
Fearn	U. States	3478.
Foster	Caldwell	4076.
Fletcher et al	Simms	5016.
Fegely & Brother	Weaver	5035.
Fredericksen	State of Louisiana	5239.
Georgia State of	Alabama	1.
Gardner et al	Mofs et al	270.
Gaines et al	Hector et al	602.
" " "	Hale	634.
" " "	Hunter	694.
" " "	Butler et al	746.
" " "	Swaihtzer	778.
Garrison	Savignac	787.
Goddard et al	Richardson	1260.
Gardner et al	Nelson & Co.	1287.
Gaines	City of N. Orleans	1647.

Greens adm't	Creighton et al	1681.
Garcia	U. States	2762.
Galbraith et al	" "	2777.
Gonzales	" "	3706.
Green	Eastland	4324.
Greenway	Howland et al	4777.
Gridley et al	Bryant	5442.
Gridley et al	Heilbrook	5463.
Hale	Gaines et al	634.
Hunter	Gaines et al	694.
Hagan	Preston et ux	833.
Herr	Waggaman	1394.
Hooper et al	Scheiner	2545.
Hooper et al	Conway	2559.
Hopkins	U. States	3445.
Hartnell	" "	3564.
Hewitt et al	Peter	3808.
Huntington	Tull et al	4312.
Hendricks	Castro	4357.
Howland	Greenway	4777.

Hillard et al	Benjamin	4808.
Harris & Morgan	Stanton & Co et al	5038.
Haney et al	Balt. & Packet Co.	4268.
Hodge et al	Williams	5364.
Hoyne et al	Redfield et	2208.
Hynes	Dermott	2512.
Insurance Co	Mordecai.	3571 5530.
Jenkins et al	Banning	5324.
Jeter	Hewitt et al	3808.
Kane	Parker	1404.
Koch	Emmerling	1642.
Kimbro	Bullitt et al	2752.
Knox Ins. Co.	Ogilvie	2898.
Kilbourne	State Saving Institution	4929.
Lawler	Claflin et al	446.
Le Roy et al	Latham et al	1479.
Lytle et al	State of Arkansas	1716.
Leavitt	Logan's adm't	2373
Logan's adm't	Leavitt	2373.
Lamie	Minturn	3900

Lawrence	Tucker	4210.
Lucas et al	U. States	4014.
Litchfield	Dubuque Pierce	5554.
Mofs et al	Gardner et al	270.
Middleton	McGrew	347.
McGrew	Middleton	347.
Morrill et al	Lane et al	414.
Maxwell et al	Moore et al	493.
Moore et al	Maxwell et al	493.
McDonald	Berthold	1467.
Morse	Brewer et al	2078.
Meyer et al	U. States	2629.
Mordecai	Ins. Co. of Va.	3411 & 5530.
Murphy	U. States	3879.
Minturn	Lane	3900.
Norwood	Emeguil et al	4282.
McMicken	Perin	4822.
Marsh	U. States	4984.
Mayor of N. York	Ransom et al	5095.
Mayor of Vicksburg	Bell	5232.

Mann vac	Wilson	5932.
M'Millan vac	Boyles vc	5984.
Nelson & Co.	Garner vac	1286.
Noe	U. States	2725.
Norris	Adams	3687.
Notrebe's heirs	Woodfolk	4491.
Neal	Bank of Pittsburg	4501.
New England L. Co.	Bliven vac.	4727-4748.
Navarro	U. States	4961.
N.Y. & Bal. Transp. Co.	Phil. Ins. N. Co.	5714.
Nicholson	Sheldon	5868.
Ogden	Parsons vac	917.
Oelrichs vc	Ford	1627.
Overton vac	Check vac	2409.
Osio	U. States	2864.
Ogilvie	Knox Ins. Co.	2898.
Olvera	U. States.	3253-3271
Ortega	U. States.	3291-3314.
Orient Mut. Ins. Co.	Wright vc	4095.
Ott	Soulard	4396.

O'Hara	Winslow et al	5355.
Penrose	Wilkinson	5.
Preston et ux	Hagan	833.
Parsons et al	Ogden	917.
Propeller Pioneer	Volk et al	1343.
Parker	Kane	1404.
Pennock	Coe, Trustee	2453.
Phila. W. & B. R. R. Co.	Phila. & C. & S. S. T. Co	2483.
Pico	U. States. 2742-	2884.
Pacheco et al	" "	3636.
Pratt	" "	3657.
Pico et al	" "	3767.
Pacheco's heirs	" "	4114.
Pacheco's adm	" "	4412.
Perin	D. Wiechers	4822.
Phil. & Balt. R. R. Co.	U. S. & Balt. Trans. Co.	5114.
Quick et	White Haven Township	2384.
Quick et	Springfield Township	2394
Rey et al	Simpson	487.
Rector	Garnier et al	602.

Richardson	Goddard et al	1260.
Redfield et al	Irvine et al	2208.
Roach & Long	Steamer Capitol	2209.
Rose et al	U. States	2697.
Robbes	" "	3399.
Rodriguez	" "	4198.
Ranson et al	Mayor of N. York	5095.
Sherwood	Bowdies et al	369.
Steamboat Hale	Sherwood et al	369.
Sinnott et al	Davenport et al	428.
Simpson	Ray et al	437.
Steamboat Orbit	Thompson	566.
Swiftzer	Gaines et al	778.
Savignac	Garrison	787.
Steamer U.S.C.R.H. Co	Felton & Co.	1287.
Steamer Capitol	Roach & Long	2209.
Steamer Capitol	Wright & Bridgford	2239.
Springfield Mutual	Quick et al	2294.
Steamboat Thames	Davenport et al	2504.
Scheimer	Hooper et al	2545.

Stackton	U. States	2810.
Sinton et al	Bancroft et al	2857.
Slater	Emerson	3357.
Sun Mut. Ins. Co.	Wright et al	4053.
Sowland	Ott	4396.
Symonds	Castner et al	4879.
State Saving Instn	Kilbourne	4929.
Shiriol et al	U. States	4940.
Stanton & Co.	Harris & Morgan	5038.
Steamship Louisiana	Steam T.B. "Anglo Celt"	"
Steam T.B. "Anglo Celt"	Steamship Louisiana	"
Steamship Keystone State	N.Y. & Balt. Trans. Co	5114.
Stetham et al	Callain et al	5144.
State of Louisiana	Fredericksburg	5239.
Steamer Louisiana	Haney et al	5268.
Schooner Fannie Cook	Dill et al	5302.
Steamship City of N.Y.	Baker et al	4808.
Sharron	Woods et al	5477.
Sheldon	Nicholson	5602.
Thompson	Ward et al	566.

Thompson et al	Collins	957.
Latham et al	Le Roy et al	1479.
Teschmaker	U. States	2603.
Thurn et al	" "	3721.
Tucker	Lawrence	4210.
Teel et al	Huntington	4312.
Tobin	Hallinshan	4442.
Thompson et al	Carroll et al	5202.
U. States	Easton	325.
" "	Fuentes	822.
Ure et al	Wright et al	2239.
U. States	Teschmaker	2603.
" "	Meyer et al	2629.
" "	White's adm't	2639.
" "	Bennitz	2687.
" "	Roe et al	2697.
" "	Roe	2725.
" "	Pico	2742.
" "	Garcia	2762.
" "	Galbraith	2777.

U. States		Stockton	2810
"	"	Pueblo Lands	2820.
"	"	Alviso	2848.
"	"	Ozio	2864.
"	"	Pico et al	2884
"	"	Bolton	3037.
"	"	Olvera	3258.
"	"	Olvera et al	3271.
"	"	Ortega et al	3291.
"	"	Ortega et al	3314.
"	"	Castillero	3341.
"	"	Robles	3399.
"	"	Walker	3412.
"	"	Hopkins	3446.
"	"	Fearn	3478.
"	"	Murphy	3579.
"	"	Hartnell	3584.
"	"	Arrijo	3670.
"	"	Vasquez	3612.
"	"	Pacheco et al	3636.

U. States	Pratt		3657.
" "	De Haas.	3679	3799
" "	Gonzales		3706.
" "	Thurm et al		3721.
" "	Dico et al		3767.
" "	Valencia		3782.
" "	De Baldo		3791.
" "	Ynurbidi heirs		3918.
" "	Pacheco heirs		4114.
" "	Barreyesa		4157.
" "	Rodriguez et al		4198.
" "	Pacheco adm		4412.
" "	Luco et al		4514.
" "	Sunol et al		4940.
" "	Narvaez		4961.
" "	Marsh		4984.
" "	Vallejo		4985.
" "	Bidwell		5383.
Volk	Rosales Orinetal		1343.
Very	Watkins		3358.

Vallandt	U. States	3612.
Valencia	" "	3782.
Verden	Coleman	3944
Valley	U. States	4146.
Wilkinson	Penrose	5.
Wakefield	Brewster	526.
Ward se	Thompson	566.
Waggaman se	Herr sal	1334.
Wright sal	Steamer Capitol	2239.
White Waterboard	Quick se	2384.
Whites admx	U. States	2639.
Wests heirs	" "	2820.
Watkins	Very	3368.
Walker	U. States	3442.
Wiseman	Chicapella	3699.
Wright se	Sun Mut. Ins. Co.	4068.
Wright se	Orient " " "	4096.
Woodfolk	Attebe's heirs	4498.
Watkinshaw	Tobin	4462
Weaver	Tegely & Brother	4108.

Whitbridge	Dill et al	5303.
Wilson	Mann et al	5332.
Ward	Babcock	5349.
Winslow et al	O'Hara	5365.
Williams	Hardge et al	5364.
Windsor et al	Baker et al	5408.
Wyant	Gridley et al	5442.
Westbrook et al	Gridley et al	5466.
Woods et al	Sharron	5477.
White et al	Wright et al	5539.
Wright et al	White et al	5539.
Yturbide	U. States	3915.
Zabriskie	Cleveland Columbus & R. R. Co.	3960.

SUPREME COURT OF THE UNITED STATES,
December Term, 1855.

To the honorable judges of the Supreme Court of the United States.

The State of Alabama, one of the United States of America, brings this her bill of complaint against the State of Georgia, another of said United States, in this the Supreme Court aforesaid. And thereupon the said State of Alabama complains and says: That by articles of agreement and cession between the United States of America and the State of Georgia, made and entered into on the 24th day of April, in the year of our Lord one thousand eight hundred and two, the said United States acquired all the territory north of the 31st degree of north latitude and south of the State of Tennessee, at one time known and designated as the Mississippi territory, unless indeed the said United States had previously acquired some portion of the northern part thereof from the State of South Carolina, by virtue of an agreement and cession made to the United States by the said State of South Carolina, on the 9th day of August, A. D. seventeen hundred and eighty-seven.

But whether said United States acquired all of said territory north of the 31st degree of north latitude from the State of Georgia, or whether a portion of the northern part thereof was acquired from the State of South Carolina, will not be a question material to be ascertained in this cause.

The complainant further states, that the first article of the agreement and cession between the United States and the State of Georgia is in the following language: "The State of Georgia cedes to the United States all the right, title, and claim, which the said State has to the jurisdiction and *sail* of the lands situated within the boundaries of the United States south of the State of Tennessee, and west of a line beginning on the western bank of the Chattahoochee river, where the same crosses the boundary line between the United States and Spain; running thence up the said river Chattahoochee, and along the western bank thereof to the great bend thereof next above the place where a certain creek or river, called Uchee, (being the first considerable stream on the western side above the Cussetas and Coweta towns,) empties into the said Chattahoochee river; thence in a direct line to Neck a Jak, on the Tennessee river; thence crossing said last-mentioned river, and thence running up the said Tennessee river and along the western bank thereof, to the southern line of the State of Tennessee, &c."

The State of Alabama further states, that said cession was made on certain conditions specified in said agreement, all of which said conditions have been fully complied with on the part of the United States, consequently the title, right, and claim of the United States to all of said territory ceded by the agreement aforesaid became perfect, absolute, and indefeasible. The complainant further says, that in the year 1803

the said United States acquired from France by the treaty of Paris other additional territory adjoining to that obtained from the State of Georgia by the cession aforesaid, some part of which said additional territory lies south of the 31st degree of north latitude. And in the year 1817 the said Mississippi territory, which included all the lands acquired from the State of Georgia, as well as some of the land and territory acquired from France by the treaty aforesaid, was by an act of Congress divided into two separate territories, which were known and designated as the Mississippi territory and the Alabama territory. The boundaries of the latter, as described and established by the said act of Congress, were as follows: Beginning at a point where the line of the 31st degree of north latitude intersects the Perdido river, thence east to the western boundary line of the State of Georgia, thence along said line to the southern boundary line of the State of Tennessee, thence west along said boundary line to the Tennessee river, thence up the same to the mouth of Bear creek, thence by a direct line to the northwest corner of Washington county, thence due south to the Gulf of Mexico, thence eastwardly, including all islands within six leagues of the shore, to the Perdido river, and thence up the same to the place of beginning. Your complainant further states, that the territory contained within these boundaries was held and governed by the United States as a territory until the year 1819, when on the 2d day of March, 1819, an act of Congress was passed to enable the people of the said Alabama territory to form a constitution and State government, and for the admission of such State into the Union; and this act, in describing the boundaries to the said State about to be admitted into the Union, gave and prescribed the same identical lines and boundaries given to and allowed the Alabama territory. Further your complainant states, that the citizens of the said Alabama territory did form a constitution and State government in pursuance of said act of Congress; and the State of Alabama, (being the name adopted for said State,) with the boundaries described as aforesaid, was admitted into the Union by a resolution of Congress, passed the 14th day of December, A. D. 1819; hence her eastern boundary is a line, which said line is the western boundary of the State of Georgia.

The complainant further states, that this line can only be ascertained with certainty and accuracy by a just and proper construction of the agreement and cession aforesaid, made and entered into as aforesaid by and between the State of Georgia and the said United States, and that by a just and proper construction thereof the said line commences at a point where the 31st degree of north latitude crosses the Chattahoochee river, and on the western bank of said river, on that part or portion of the said bank that reaches to or touches the water at ordinary or common low water, and runs up said river and along the western bank thereof, and on said portion of said bank that touches the water at its ordinary or common height, until said line reaches the point on said river from whence it leaves the same in a straight direction to Neck a Jak—in other words, that said line, so far as it runs on

the bank of the Chattahoochee river, runs upon the western bank at the usual or common low-water mark. And as evidence that the line as above described is the true and correct line according to the true intent and meaning of said agreement and cession, your complainant states, that the banks of said river over and upon which said line runs, though at some few places high and steep over which the water never passes, yet said banks are mostly low and flat, so that when the river is high, or when there is a usual or common freshet, the water of said river spreads over the land at some places as much as a half mile, at some places less, and other places more than a half mile west from the common low-water mark. And your complainant cannot and never has believed that it was the intention either of the State of Georgia or of the United States that said line was to be placed on what may be termed the high-water mark of said river, at the time they entered into the agreement and cession aforesaid, not only on account of the uncertainty in ascertaining and locating the same, but also for the further reason that at some places on said river the jurisdiction of the State of Georgia would pass far west of the river at its ordinary height, whilst at other places, where the banks or bluffs are high and steep, it would pass but little or none at all beyond the line marked by the ordinary or common stage of the water.

Influenced by these reasons, as well as by the consideration that the line of ordinary low-water mark is readily and easily ascertained, the State of Alabama has ever claimed that said line runs upon the bank where the water touches the same when the river is at its ordinary or common height—that is, that said line runs on the western bank of said river at usual or common low-water mark, and not on the bank at high-water mark. And your complainant has ever claimed and exercised jurisdiction all along and upon said bank to low-water mark as above described, until the line reaches that point on the river from whence it starts directly to Neck a Jak. And your complainant further states, that in the exercise of such jurisdiction to said low-water mark on the bank of said river, no injury was done to the State of Georgia, nor was there any intrusion made upon her jurisdiction, because the line that separates the two jurisdictions, the one from the other, so far as it runs on the bank of said river, runs at and upon the ordinary or common low-water mark.

The complainant further says, that about seventeen or eighteen years ago a question arose between the said State of Georgia and this complainant touching the precise point at which said line left the river Chattahoochee in the direction for Neck a Jak, and they could not then agree on said point or place; but the State of Georgia proceeded ex parte to ascertain said point and to run said line; and although the complainant was not fully satisfied therewith, yet she submitted to and recognised the same; and it was then hoped and believed that all questions touching the boundary line between the complainant and the State of Georgia were finally ended and concluded, and that there never more would be dispute or controversy respecting the same. But now

so it is, may it please your honors, that the State of Georgia, within a short time past, has asserted claim to all lands on the western side of the Chattahoochee river usually covered by high water, and asserts that the line should be run, and in fact is located by her agreement with the United States on the western bank of said river at high-water mark, and consequently that she is rightfully possessed of all the land west of the river usually covered by the freshets of the Chattahoochee river, and may lawfully exercise jurisdiction over such land up to high-water mark.

This pretension and claim of the State of Georgia the complainant alleges to be unjust and unfounded, and is greatly prejudicial to the citizens of the State of Alabama living upon and owning the lands adjoining the Chattahoochee river; and further, that such unjust pretension and claim tend to disturb the peace of the citizens of both States living near said line, and in fact renders the line that separates said States from each other unsettled and uncertain; indeed if the claim of the State of Georgia was well founded, which however the claimant denies, then it would be at many places impossible to ascertain the exact line, and this uncertainty within itself would be an evil which would well warrant the complainant in calling upon this honorable court to correct and avert. But inasmuch as the claim and pretension asserted by the State of Georgia to the lands on the western bank of the Chattahoochee river up to high-water mark is illegal and unfounded, and as there is no other mode by which said boundary line between said States can be ascertained and definitely settled than by the judgment and decree of this honorable court, your complainant prays your honors to take cognizance thereof, and that the State of Georgia may be made a defendant to this bill, and show cause, if any can be shown, why the relief hereinafter prayed should not be granted; and further, that the State of Georgia be required to answer all the allegations in this bill contained as fully and particularly as if the same were here repeated, and the said defendant particularly thereunto interrogated, and that said defendant answer the following interrogatories, numbered from one to six inclusive:

First. Whether or not the said defendant does not claim all the lands on the western bank of the Chattahoochee river, north of the 31st degree of north latitude, up to the point or place where the line that separates the State of Alabama from the State of Georgia leaves the bank of said river in a straight direction for Neck a Jak, and whether she does not claim and assert a right to exercise jurisdiction and authority over all of said land on the western side of the Chattahoochee river up to high-water mark?

Second. Whether the defendant does not claim that the jurisdiction and soil all along the bank of said river, up to high-water mark, belong exclusively to her, the said State of Georgia, and that the line separating the State of Alabama from the State of Georgia is located on the western bank of said river at high-water mark?

Third. Has not the complainant described correctly the character of the bank of said river, and particularly that portion of the bank com-

mencing at the 31st degree of north latitude, and extending sixty or seventy miles above?

Fourth. Does not the water at many places on the western side of said river, and south of the point where said line leaves the same for Neck a Jak, pass far beyond and west of the ordinary low-water mark?

Fifth. Are not the banks of said river at many places north of the 31st degree of north latitude low and flat, and does not the water of said river during the usual freshets pass over the adjoining land at some places as much as a half mile, at some places less, and at other places more than a half mile west of the ordinary low-water mark of said river?

Sixth. Has not the complainant correctly set forth the first section of the articles of agreement and cession between the United States and the State of Georgia (and described in this bill) so far as is necessary to ascertain the boundary line between the States of Alabama and Georgia, and has not the complainant correctly described the titles by which the United States acquired the Alabama territory? And, if not, in what particular is the description defective, and what part of the articles of agreement and cession not set forth, is material in ascertaining said line?

And your complainant prays your honors that the line between the State of Alabama and the State of Georgia, so far as it runs on the bank of the Chattahoochee river, be ascertained and established, and that said line be decreed and declared to be the usual and common low-water mark on the west side of the Chattahoochee river. And if in the judgment of this court it should be necessary, then, that a commission issue from this court to certain commissioners to be named therein, authorizing and requiring them to survey and mark said line and to set up and fix monuments and marks on said line, that hereafter it may be known to all.

And also that the complainant be quieted in her possession and jurisdiction to and over all the lands west of low-water mark on the west side of the Chattahoochee river, north of the 31st degree of north latitude, and up to the point where the line leaves said river for Neck a Jak, and that the defendant be enjoined from ever claiming any part thereof, and from exercising jurisdiction over the same. And may it please the court to grant to your complainant such other and further relief as justice and equity may require according to the allegations and facts of this case.

And may it please the court to grant unto your complainant a writ of subpœna against the State of Georgia, thereby commanding the said State of Georgia, under such penalty as may seem meet, to appear before this honorable court at such day as may be prescribed therein, and answer all the allegations, statements, and interrogatories contained in this bill, and further to abide by and perform such orders and decree as may be made in the premises; and your complainant will ever pray, &c.

E. S. DARGAN.

In the Supreme Court of the United States.—Bill in Equity, pending at the December term, 1858.

THE STATE OF ALABAMA
vs.
THE STATE OF GEORGIA.

The Answer of the State of Georgia.

And now comes the State of Georgia by her counsel, Linton Stephens and Obadiah C. Gibson, during the said term, and reserving to herself all manner of advantage to be derived from demurrer or plea to said bill, submits the following answer thereto:

The State of Georgia admits that she made a cession of her western territory to the United States in the year 1802, but it was done on the 16th day of June in that year, instead of the 24th day of April, as alleged in said bill, the articles of cession having been framed by commissioners on the 24th day of April, but not taking effect, nor intended by their terms to take effect, until subsequently ratified by the legislature of Georgia, as was done on the 16th day of June. The language of that cession is quoted in said bill with substantial correctness, so far, perhaps, as this controversy can be affected by it, but Georgia prefers to give the words of the cession as they are contained in her statute of ratification. In that statute the words used are somewhat different from those set forth in the bill, and are as follows: "The State of Georgia cedes to the United States all the right, title, and claim which the said State has to the jurisdiction and soil situated within the boundaries of the United States, south of the State of Tennessee and west of a line beginning on the western bank of Chatahouchie river, where the same crosses the boundary line between the United States and Spain, running thence up the said river Chatahouchie, and along the western bank thereof to the great bend thereof, and next above the place where a certain creek or river called Uchee (being the first considerable stream on the western side, above the Cussetas and Coweta towns) empties into the said Chatahouchie river; thence in a direct line to Nickajack, on Tennessee river; thence crossing said last mentioned river, and thence running up the said Tennessee river and along the western bank thereof to the southern boundary line of the State of Tennessee, upon the following express conditions," &c. With which conditions the State of Georgia admits there has been what has been accepted by Georgia as a compliance on the part of the United States. The State of Georgia also admits what is alleged by the bill in relation to the definition of the boundaries of the Territory of Alabama, by act of Congress, in the

year 1817, and the subsequent admission of the State of Alabama into the Union with the same boundaries, in the year 1819; and also, the State of Georgia admits the conclusion drawn from all this, that the eastern boundary of Alabama is simply the western boundary of Georgia, whatever this last may be. This, Georgia not only admits for Alabama, but affirms for herself.

So far as this line runs along the western bank of the Chatahouchie river, Georgia denies that it runs along the usual or common low-water mark, but, on the contrary, she contends that it runs along the western bank at high-water mark, using high-water mark in the sense of the highest line of the river's bed; or, in other words, the highest line of that bed, where the passage of water is sufficiently frequent to be marked by a difference in soil and vegetable growth.

In answer to the specific questions which are propounded by the bill, the State of Georgia says, that so far as the Chatahouchie river is the dividing line between her and the State of Alabama, she does claim all the lands, and a right to exercise jurisdiction over all the lands on the western bank of said river up to high-water mark, using high-water mark in the sense just above explained. She says in answer to the second question, that she does claim that the jurisdiction and soil all along the western bank of said river up to high-water mark, belong exclusively to her, and that the line separating the State of Alabama from the State of Georgia is located on the western bank of said river at high-water mark, using the term high-water mark in the sense before explained. To the third question the State of Georgia says, that while she regards the description of the banks of the river given in the bill as being too highly drawn, yet she admits that it is more applicable to the southern part of the bank than to that part of it sixty or seventy miles above the 31st degree of north latitude; and she admits that in some places the banks are flat, but she says that in other places, especially on the upper and longer portion of the river, the banks are generally steep and well defined, so much so as to be familiarly known as "The bluffs of the Chatahouchie." To the fourth and fifth questions Georgia says, that the banks of said river, at a number of places along the dividing *the* line between the two States, are low and flat, and it is true that in freshets the water passes west of the low-water mark, as far, perhaps, as half a mile in some places; and in a few places, perhaps even farther. To the sixth and last specific question, Georgia answers, that the first section of the articles of cession from Georgia to the United States is set forth in the bill with substantial correctness, so far as this controversy can be affected by it, and that the exact words of that section are as before stated in this answer. Also, she admits that section to be the only one material to this issue. She admits that the title of the United States to the Territory of Alabama was

acquired from Georgia by the means described in the bill, but she does not admit the intimation that the United States had acquired a previous title from the State of South Carolina, nor can she perceive the relevancy of such an intimation to the present issue. And the State of Georgia having fully answered the complainant's bill, claims to be hence discharged.

LINTON STEPHENS and
OBADIAH C. GIBSON,
Counsel for State of Georgia.
WILLIAM R. McLAWS,
Attorney General for the State of Georgia.

EXECUTIVE DEPARTMENT,
Milledgeville, Georgia, January 6th, 1859.

The above and foregoing answer made and given under my hand and the great seal of the State, at the capitol in Milledgeville, the day and year aforesaid.

[L. S.] JOSEPH E. BROWN,
Governor of Georgia.

By order of the governor:
E. P. WATKINS,
Sec'y of State.

Filed 11 Jan., 1859.